



STATE OF IOWA

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DEPARTMENT OF CORRECTIONS
Gary D. Maynard, Director

DATE: March 10, 2004

TO: Beth Lenstra

FROM: Mary A. Benning

SUBJECT: Questions from Justice Systems Appropriations Subcommittee

The following response pertain a question asked of the Department of Corrections during the presentation to the Appropriations Subcommittee for Justice Systems.

Question: What liability issues exist regarding inmates working for county and non-profit organizations? Specifically, who is responsible for any workers' compensation claims?

Answer: The Attorney General's Office has been contacted concerning this issue and provides the following information: Iowa Code Section 85.59 defines the term "inmate" for purposes of workers' compensation issues. Section 85.59 specifically states "an inmate on a work assignment under section 904.703 working in construction or maintenance at a public or charitable facility, or under assignment to another agency of the state, county or local government, shall be considered an employee of the state." This section further defines an inmate as an employee of the state for purposes of workers' compensation if they are providing services pursuant to a 28E agreement entered into under section 904.703. If either of these situations apply the organizations and counties should not incur workers' compensation liability as a result of the use of inmate labor, as defined in the above-referenced section.

However, confusion may be arising from Iowa Code Section 904.906, which provides that an inmate employed *on a work-release program* falls under the insurance carrier of the employer of the project. This would include institutional work release programs under section 904.910. Thus, its possible a "work release" inmate under sections 904.901, *et. seq.*, could, for example, be working in maintenance at a public facility and the owner of that facility would be responsible for workers' compensation and not the state. But if the assignment is under section 904.703, either through a 28E agreement or other qualifying maintenance or construction work, then the state is liable for any work. comp. covered expense.

It therefore becomes important to note the status of the inmate and whether they have been placed pursuant to the work release program. Generally, work

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provided for counties and non-profit organizations by Department of Corrections offenders for inmate labor or community work projects would not subject these entities to potential workers' compensation liability.